



January 2009

## Client Advisory

### President Obama Signs New Law Extending Time For Employees To Sue For Back Pay

President Obama signed his first piece of legislation yesterday -- an employment law known as the Lilly Ledbetter Fair Pay Act of 2009. The Fair Pay Act reverses a U. S. Supreme Court decision during the Bush presidency which limited the time period in which an employee could sue for discrimination damages based on wages. This Act is not only the first of what could be many employee-friendly laws under the new Administration, it is significant itself because it allows active employees to potentially sue for acts of discrimination that occurred long ago.

The Fair Pay Act overrules the 2007 decision of the U. S. Supreme Court in Ledbetter v. Goodyear Tire & Rubber Co. In that case, Lilly Ledbetter sued Goodyear Tire for gender discrimination, claiming that she had consistently earned less than her male colleagues during her 19 year career. Prior to the case reaching the Supreme Court, Ledbetter had received damages in excess of \$300,000 after the jury believed she had suffered from years of lower salary because of her sex. But, in May 2007, the Supreme Court threw out Ledbetter's complaint based on the established statute of limitations (which in her case was 180 days). The crux of the decision was that she had to sue within 180 days of the initial act of discrimination, i.e., the first time she began receiving less pay than her male counterparts. Because that was literally decades earlier than when she finally sued, the Court dismissed her case.

The Fair Pay Act overrules the Ledbetter decision. This Act, signed by President Obama on January 29, 2009 (with Lilly Ledbetter literally at his side), now provides that the statute of limitations does not run from the first act of discrimination. Instead, the statute of limitations restarts every time an employee receives a discriminatory paycheck. So, as long as an employee files his/her claim in a timely manner after any discriminatory paycheck, the claim will not be time-barred. This means an employee can sue over a decision made even 20 or 30 years ago if he/she can show that the decision was discriminatory and that the discriminatory decision is still causing an effect on his/her pay. The most common examples would be: (1) raises subsequent to the discriminatory decision were lower because they were based on the lower salary; and (2) the discriminatory decision has subsequently caused lower bonuses or reduced chances for promotion.

The Fair Pay Act applies to virtually all types of discrimination protected by federal law. Specifically, the Act amends Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act. This means that it applies to all but the smallest employers, for discrimination based on race, sex, color, national origin, religion, age or disability.

The Fair Pay Act is limited to claims based on unfair wages; so, the Act does not change the time period to file suit for harassment claims, nor does it change the time period for employees who claim they were unfairly terminated. Rather, this law would only impact: (1) current employees suing for wage disparity; or (2) former employees suing for wage disparity that took place within the last 180 to 300 days (which are the applicable limitations periods under these federal laws). Also, a small relief for employers is that under the Act, an employee's recovery is limited to two years of back pay. Therefore, even if the employee claims discrimination in pay over the past 10 or 20 years, the employee's damages are capped at the two years prior to filing the claim. The Act takes effect immediately, and applies to all claims which were initiated on or after May 28, 2007. Finally, this Act does not change any State laws -- claims filed purely under New Jersey, Pennsylvania or Delaware law would not be affected by this Act.

With the passage of the Act, employers now face enhanced exposure to lawsuits alleging discrimination in pay, including class action lawsuits. The most troubling aspect of the new law is that it allows employees to file suit over employment decisions made long ago. This will prove to be a headache for employers when it comes time to locate the decision makers and the evidence needed to defend these claims. As a result of the Act, employers may wish to reconsider their recordkeeping practices with respect to employment decisions and to retain more documentation on current employees than previously.

The fact that President Obama's first piece of legislation was an employee-friendly law is certainly not a mere coincidence. Based upon the issues he addressed while on the campaign trail, it is expected that this will be the first of several laws that will provide more rights and remedies to employees under federal law. Therefore, it is important that employers pay attention to emerging employment legislation under the new Administration to ensure that they are aware of the laws and what impact they will have on employers.

If you have any questions about the Lilly Ledbetter Fair Pay Act of 2009, or how it or upcoming laws may impact your business, please contact a member of Archer & Greiner's Labor and Employment Department at 856-795-2121.

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